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Patrick W. Turner
Attorney

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EXECUTIVE SECRETARY

November 5, 1999

VIA HAND DELIVERY

Mr. David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

Re: *Consumer Advocate Division vs. BellSouth Telecommunications, Inc.*
Docket No. 99-00574

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of a Motion by BellSouth Telecommunications, Inc. for Order Limiting the Parties to No More than Thirty (30) Discovery Requests, Including Subparts. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,

Patrick W. Turner

PWT/jem

Enclosure

FILE

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE**

REC'D TN
REGULATORY AUTH.

CONSUMER ADVOCATE DIVISION

vs.

**BELLSOUTH TELECOMMUNICATIONS,
INC.**

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Docket No. 99-00574

Tariff 99-00574

1999 NOV 5 PM 3 06

EXECUTIVE SECRETARY

**MOTION BY BELLSOUTH TELECOMMUNICATIONS, INC.
FOR ORDER LIMITING THE PARTIES TO NO MORE THAN
THIRTY (30) DISCOVERY REQUESTS, INCLUDING SUBPARTS**

Pursuant to Section 4-5-331 of the Tennessee Code Annotated and Rule 26 of the Tennessee Rules of Civil Procedure, BellSouth Telecommunications, Inc. ("BellSouth") respectfully moves the Tennessee Regulatory Authority ("TRA") to issue an order limiting the parties to thirty (30) discovery requests, including subparts, in this docket.

BACKGROUND

On October 15, 1999, the TRA issued a notice establishing a procedural schedule in this docket which limited discovery requests to 30 items, including subparts. In response to this Notice, the CAD filed a motion requesting an extension of time and a continuance of the deadlines established by the notice. *See* Motion for Extension of Time and Continuance and for Pre-Hearing Conference filed October 22, 1999. In the same motion, the CAD complained about the "limits on discovery in the notice." *Id* at 1. A week later, the CAD filed yet another document complaining about the limitation on the number of discovery requests each party could file in this docket. *See* "Objections to Limits Imposed by the Executive Secretary and Request to Effect Discovery in Accordance with the Tennessee Rules of Civil Procedure" filed October 29, 1999.

FILE

The CAD, therefore, apparently anticipates filing a bounty of discovery requests in this straight-forward proceeding. This is not particularly surprising in light of the CAD's discovery practices in prior dockets, which include but are not limited to:

1. Filing 43 discovery requests consisting of more than 50 subparts in Docket No. 99-00559 (Generic CSA) (*see* "Consumer Advocate's September 16, 1998 Discovery Requests, Request to Admit or Deny, and the Production of Documents for Inspection and Copying");
2. Filing 32 discovery requests consisting of more than 80 subparts in Docket No. 97-00309 (BellSouth's 271 Application) (*see* "Consumer Advocate's First Discoveries (sic) Request of BellSouth Telecommunications, Inc.");
3. Filing 16 discovery requests consisting of more than 100 subparts in Docket No. 96-01423 (Price Regulation Filing of United Telephone-Southeast, Inc.) (*see* "Consumer Advocate's Second Discovery Requests of United Telephone-Southeast, Inc."); and
4. Filing 94 discovery requests consisting of more than 200 subparts in Docket No. 97-00409 (Payphone Docket) (*see* "First Discovery Requests").

In light of the CAD's obvious inclination to file burdensome and unreasonable discovery requests, establishing a reasonable limitation on the number of discovery requests in this docket is both prudent and appropriate.

ARGUMENT

If requested by a party, the TRA or a hearing officer may issue protective orders related to discovery in accordance with the Tennessee Rules of Civil Procedure. *See* T.C.A. § 4-5-311(a). *Accord* Rule 1360-4-1-.11(4) ("The administrative judge shall decide any motion related to discovery under the Administrative Procedures Act . . . or the Tennessee Rules of Civil Procedure.) The Tennessee Rules of Civil procedure, in turn, permit orders limiting "the frequency or extent of the use of" discovery, *see* T.R.C.P. 26.02(1), and they permit "any order which justice requires to protect a party or person from annoyance, embarrassment, oppression,

or undue burden or expense." T.R.C.P. 26.03. The Rules of Civil Procedure also specifically sanction orders that "discovery not be had," that the discovery "be had only on specified terms and conditions," or that "certain matters not be inquired into, or that the scope of the discovery be limited to certain matters." *Id.*

Moreover, limitations on the initial number of discovery requests is not uncommon in Tennessee. In fact, the Local Rules of Court for Davidson County provide that "[n]o party will serve more than thirty single question interrogatories, including subparts, on another party without leave of court." Rule 22, § 22.04. The Local Rules of the United States District Court for the Middle District of Tennessee also provide that interrogatories "shall be limited to thirty (30) such interrogatories" and that "[s]ubparts of a question shall be counted as additional questions for purposes of the overall number." Local Rule 9(a). Finally, the TRA's Notice of Rulemaking of April 30, 1997 includes a proposed rule providing that "[n]o party shall serve on any other party more than thirty (30) single question interrogatories, including sub-parts, without leave of the Authority, or an Administrative Law Judge." Proposed TRA Rule 1220-1-2-.11(7)(a).

BellSouth submits that the most reasonable approach to discovery in this docket is to limit both parties to 30 discovery requests.¹ If, after reviewing BellSouth's response to its discovery requests, the CAD wants to file additional discovery requests, the CAD may petition the Authority for permission to file additional discovery requests. This approach will result in absolutely no prejudice to the CAD, as it will be able to obtain additional discovery upon an

¹ Even in arbitration proceedings involving dozens of unresolved issues, thirty discovery requests typically are more than sufficient to allow the parties to prepare their cases.

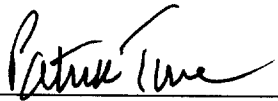
appropriate showing. It will also allow the TRA to address any such request for additional discovery in the context of a concrete record rather than on the basis of abstract supposition.

CONCLUSION

For the reasons stated above, the TRA should limit each party to 30 discovery requests, including subparts.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on November 5, 1999, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☒ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight

Richard Collier, Esquire
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

- ☐ Hand
- ☒ Mail
- ☒ Facsimile
- ☐ Overnight

Vincent Williams, Esquire
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